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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARIO CASTILLO,

Petitioner,

No. 2:11-cv-3430 LKK EFB P

vs.

RICK HILL,

Respondent.

FINDINGS AND RECOMMENDATIONS

_____/

Petitioner is a state prisoner proceeding without counsel on a petition for a writ of habeas corpus. *See* 28 U.S.C. § 2254. On June 28, 2012, respondent moved to dismiss the petition on the ground that the claims are uncognizable. Dckt. No. 11. On September 5, 2012, because petitioner had not timely filed either an opposition or a statement of non-opposition to respondent’s motion, the undersigned issued an order directing petitioner to file an opposition or statement of non-opposition to the pending motion within 21 days. Dckt. No. 12. On September 13, 2012, petitioner filed a statement of non-opposition, stating that he does not oppose the motion to dismiss. Dckt. No. 13. The undersigned finds that petitioner has consented to the granting of respondent’s motion to dismiss.

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1 Accordingly, it is hereby RECOMMENDED that:

- 2 1. Respondent's motion to dismiss, Dckt. No. 11, be granted; and
3 2. The Clerk be directed to close the case.

4 These findings and recommendations are submitted to the United States District Judge
5 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
6 after being served with these findings and recommendations, any party may file written
7 objections with the court and serve a copy on all parties. Such a document should be captioned
8 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections
9 within the specified time may waive the right to appeal the District Court's order. *Turner v.*
10 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).
11 In his objections petitioner may address whether a certificate of appealability should issue in the
12 event he files an appeal of the judgment in this case. *See* Rule 11, Federal Rules Governing
13 Section 2254 Cases (the district court must issue or deny a certificate of appealability when it
14 enters a final order adverse to the applicant).

15 Dated: October 17, 2012.

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17 EDMUND F. BRENNAN
18 UNITED STATES MAGISTRATE JUDGE
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